

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DENYS NAMYSTIUK,
Plaintiff,
v.
SMITH BARNEY,
Defendant.

Case No. [15-cv-03078-MEJ](#)

**ORDER FOR CLERK OF COURT TO
REASSIGN CASE WITH REPORT &
RECOMMENDATION**

On July 2, 2015, Plaintiff Denys Namystiuk filed a Complaint and Application to Proceed In Forma Pauperis (“IFP”). As Plaintiff has now filed a declination to proceed before a magistrate judge and a request for reassignment, the Clerk of Court shall REASSIGN this case to a District Judge with the following recommendation.

Pursuant to 28 U.S.C. § 1915, a district court may authorize the commencement of a civil action in forma pauperis if it is satisfied that the would-be plaintiff cannot pay the filing fees necessary to pursue the action. 28 U.S.C. § 1915(a)(1). The policy for allowing a plaintiff to proceed in forma pauperis is to protect litigants from abandoning “what may be a meritorious claim in order to spare himself complete destitution.” *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 340 (1948). However, “[c]ourt permission to proceed in forma pauperis is itself a matter of privilege and not right; denial of in forma pauperis status does not violate the applicant’s right to due process.” *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984).

Under 28 U.S.C. § 1915(a)(1), a person submitting an application to proceed in forma pauperis must include a statement of all assets demonstrating the person is unable to pay the court costs and fees. An affidavit to proceed in forma pauperis is sufficient if it indicates “that one cannot because of his poverty pay or give security for the costs and still be able to provide himself

1 and dependents' with the necessities of life." *Adkins*, 335 U.S. at 339.

2 In his IFP Application, Plaintiff states that he has received money in the past twelve
3 months from "business, self-employment," yet he does not provide the amount received. Dkt. No.
4 3. As the application does not comply with the requirements of 28 U.S.C. § 1915(a)(1), the
5 undersigned ordered Plaintiff to file a declaration by August 3, 2015, explaining this source of
6 income, the amount of money received, and the type of currency (e.g., U.S. Dollars, Ukrainian
7 hryvnia, etc.). Dkt. No. 6. However, if Plaintiff does not file a responsive declaration, the
8 undersigned finds that Plaintiff's current IFP Application does not establish he is unable to pay the
9 fees necessary to pursue this action. Accordingly, if Plaintiff fails to respond, the undersigned
10 RECOMMENDS the newly-assigned judge deny Plaintiff's IFP Application.

11 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2), Plaintiff
12 file any objections within 14 days after being served.

13 **IT IS SO ORDERED.**

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15 Dated: July 27, 2015

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19 MARIA-ELENA JAMES
20 United States Magistrate Judge
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 27, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Denys Namystiuk
Mate Zalka, 6B, 74
Kyiv, 04211
Ukraine

Dated: July 13, 2015

Richard W. Wieking
Clerk, United States District Court



Chris Nathan, Deputy Clerk to the
Honorable MARIA-ELENA JAMES

United States District Court
Northern District of California